IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 556 of 2007()

AGAINST THE ORDER IN LPC 16/92 IN STC.1246/1990 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

.....

PETITIONER: ACCUSED

ABOOBAKER ANCHILLATH, AGED 46 YEARS,
S/O. K.P.MAMMU HAJI, KUTTOOR P.O.,
(VIA) M.M.BAZAR, MATHAMANGALAM, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: RESPONDENT

STATE - REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 556 of 2007

- -

Dated this the 1st day of March, 2007

O R D E R

The petitioner faces indictment in a prosecution under the provisions of the Prevention of Food Adulteration Act. The case was registered as early as in 1990. The petitioner was not available and the case against him was transferred to the list of long pending cases and the same is pending as L.P.C.16 of 1992. The petitioner has not appeared before the learned Magistrate thereafter. Coercive processes have been initiated by the learned Magistrate to secure the presence of the petitioner. The petitioner has, in these circumstances, come to this Court. He raises two pleas. First of all it is contended that the proceedings against him is liable to be quashed.

2. What is the reason? The counsel submits that though the petitioner had sold a sample of peas, the report of the analyst shows that the article contained extraneous organic matters like rice and gree gram. The learned counsel for the petitioner submits that the petitioner did not sell any article containing rice and green gram. It

is, in these circumstances, submitted that the sample analysed by the analyst is not the sample drawn from the petitioner.

3. By looking into the contents of Annex.2, i.e. Ext.P13 report, such a ready conclusion cannot be drawn by this Court at this stage of the proceedings under Section 482 Cr.P.C. It is certainly for the petitioner to appear before the learned Magistrate and raise all his contentions, including the contention that the sample which was analysed by the expert is not the sample which was allegedly drawn from his premises. The plea for quashing of proceedings cannot obviously be succeeded, in these circumstances.

4. The learned counsel for the petitioner then submits that his omission to appear before the learned Magistrate was for reasons beyond his control. His counsel had expired. He was waiting for instructions from his counsel. He did not get any and that was the reason why he could not appear before the learned Magistrate. I do not want to express any opinion on that explanation offered to justify his omission/failure to appear before the learned Magistrate from 1992 to 2007. I need only mention that it is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier

appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This Petition is accordingly dismissed, but subject to the above observations/directions. I may specifically observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm